

REMARKS

Claims 1, 2, 4-10, 13-16, and 18-22 remain in the case. Applicant respectfully requests their reexamination as amended and requests they now be allowed. Applicant also wishes to apologize for presenting this amendment so late in the allotted three months, and hopes that the examiner is not inconvenienced.

Independent claims 1, 5, 7, 21, and 22 have each been amended to apply only to "articles of the type having an elongate substantially cylindrical shape with a first end surface that is normally the same as a second end surface". Ample basis in the original application exists for this amendment. For example, the term "the same" can be found on p. 6, line 9 in referring to the two end surfaces of the article. The remaining changes to the claims simply cause the claims to state more artfully, well-known characteristics of articles, most typically fluorescent bulbs, or add descriptive matter already present in the description. Accordingly, applicant believes that these amendments do not constitute new matter, and entering these amendments is therefore proper.

Anticipation

Claims 1, 4-8, 16, 18, and 20-22 in their form before the current amendment have all been rejected as anticipated by Neely et al., US Pat. No. 5,164,575. Applicant respectfully traverses and

requests reexamination.

Neely discloses a specimen tube tray for storing a number of different blood samples. The tubes have stoppers that differentiate each from the others in the tray. Each of the tubes may for example, have a different stopper color to identify or distinguish the characteristics of the blood stored within.

At least some of the rejected claims as examined arguably read on the Neely disclosure. As amended, these claims clearly do not. In the first place, each of these claims are limited to "articles of the type having an elongate substantially cylindrical shape with a first end surface that is normally the same as a second end surface". Clearly, the stoppered ends of these specimen tubes are different from the closed ends.

But each of the claims rejected here have additional limitations that distinguish from Neely. Claim 1 does not apply to specimen tubes. It is inconceivable that these specimen tubes will suggest to a user that they can be distinguished by whether the tube is stored with the stopper visible or not visible. In fact, the entire point of Neely is for the stoppers to be visible at all times in the tray to allow specimen identification by the stoppers' color codes.

With respect to claim 4, the closed ends of the Neely tubes are not color-coded. Why should they be, when the stoppers provide the differentiation and inverting the tubes will sooner or later

lead to leaking of the samples through a stopper not properly inserted?

Claim 5 is drawn to a package of articles. Neely does not show a package of articles, but rather articles arranged in a tray, so that the sides can be seen. As with claim 4, Neely provides not the faintest hint of an advantage to inverting the tubes. Doubtless, the suggestion that these tubes could be advantageously inverted would be met with derision.

Secondly, with respect to claim 5, Neely discloses tubes that each have a unique color code at one end, so that each tube can be distinguished from every other tube. Claim 5 discloses tubes that allow for distinguishing only a first type of tube (new ones) from a second type of tube (old ones). It is counterproductive for the articles of claim 5 to each have its own unique color as Neely does, since this would make the task of distinguishing new tubes from old more difficult rather than less difficult.

Claim 6 depends from claim 5 and is allowable for that reason. Claim 6 as now amended also contains a previous limitation regarding marking on the package. (Applicant notes ambiguity in the previous claim 6 in this regard, and has amended to remove same.) Assuming Neely's tray can be considered to be a package (which applicant questions) the tray has no markings adjacent to the first identifiable characteristic. There is no reason for such markings. It surely is easy enough for a technician to distinguish

the stoppered ends of the tubes from the closed ends. And the tray is not the type of package to be closed in a way that fails to distinguish the two ends of the tubes. Therefore, a further basis for allowing claim 6 is present.

The preamble of claim 7 distinguishes it from Neely. The comments made regarding claim 1 apply to it. Claims 8 and 18 depend from claim 7 and are allowable for the same reasons.

Claim 16 depends from claim 1 and is allowable for the same reasons that claim 1 is allowable.

Claim 20 depends from claim 18 and is allowable for similar reasons. Claim 20 also includes the limitation of a change to the topography of the perimeter. Support for this amendment can be found in the description on p. 11, line 18. Neely shows printing only on the tubes in Fig. 5, which is different from altered topography, see Neely, col. 6, line 46ff. Accordingly, another basis for allowing claim 20 exists.

Obviousness

Claims 9 and 19 have been rejected as obvious over Neely. Applicant respectfully traverses this rejection also and requests reexamination of these claims also.

Claim 9 depends from claim 7 and is allowable for the same reasons.

Claim 19 depends from claim 18 and is allowable for the reasons that claim 18 is allowable.

Claims 13 - 15 have been rejected as obvious Maddock in view of Neely. Applicant respectfully traverses this rejection also and requests reexamination of these claims.

Maddock is directed to storage and transportation of fluorescent tubes. As such it is non-analogous art to Neely, which pertains to blood sample storage. It's not reasonable to expect that one of ordinary skill attempting to recreate the subject matter of these claims would try to combine the teachings of such disparate teachings to solve the problems in identifying new and old fluorescent tubes when replacing old tubes.

Secondly, claims 13 - 15 depend from claim 1 and are allowable for the same reasons.

Third, Maddock teaches away from claims 13 - 15. Maddock distinguishes a new bulb from a used one by breaking the old one. Such a stratagem is simply different from the stratagem that claim 13 makes available, which is to allow the person replacing them to distinguish tubes by the orientation in the package.

Fourth, apart from the significant substantive differences between Maddock and claim 13, Maddock teaches a decidedly inferior approach. The Maddock stratagem is time-consuming and messy. The fact that Maddock with his tube carrier goes to some lengths to contain the shards of the broken tubes is testimony to that. When emptying the carrier, the possibly toxic fluorescent dust must be contained. The thousands of glass slivers create the risk of cuts.

Using such a carrier as Maddock's, requires additional handling of these fragile tubes. It is a foregone conclusion that such additional handling will increase accidental breakage.

Next, the Maddock carrier in and of itself adds cost to the process of replacing tubes. The carrier holds only a fraction of what the factory box holds, so it must be frequently replenished, adding time to the process. And of course the carrier itself costs money. Why spend it on these factors only to achieve a poorer result?

Lastly, Maddock itself provides a strong argument for allowing claims 13 - 15. If claims 13 - 15 teach an obvious solution to the problem of handling and differentiating old and new fluorescent tubes, why should Maddock adopt and patent his inferior process? Surely the Examiner isn't arguing that inventor Maddock has less than ordinary skill in the arts pertaining to fluorescent tube replacement. Nor does the record here contain any proof that the level of ordinary skill in this area has advanced since Maddock filed his application in 1989. In this regard, applicant notes that the §103 standard for obviousness is whether one of ordinary skill will find not obvious an invention as expressed in a claim, presumably a lower level than the (extraordinary?) skill in the art standard of §112 for adequate disclosure.

Conclusion

The structure defined by these claims, while simple, is

unique. It provides the opportunity for a substantially improved procedure for replacing "articles of the type having an elongate substantially cylindrical shape" and that normally have visually identical ends. This opportunity arises from the ability created by this invention to differentiate old from new articles by their orientation in the factory box as each old article is removed and replaced in the space in the factory box created by the new article that is placed in service in place of the old. Usually, these articles will comprise fluorescent tubes.

Applicant respectfully submits that the claims now in this case are patentably distinct over the cited references. Applicant respectfully requests that the Examiner reconsider these claims as amended and pass the case to issue.

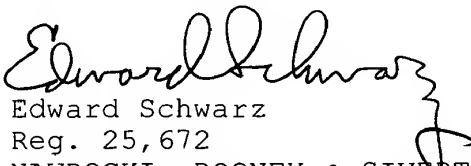
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Respectfully submitted,

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By his attorney,

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